United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: November 28, 1997

TO : James S. Scott, Regional Director
Region 32

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Can-Am Plumbing, Inc.
Case 32-CA-16097

220-2550-8100
220-2587
240-3367-3380
512-5009
512-5072
625-1967-5600

This case was submitted for advice regarding whether a non-signatory employer's lawsuit against a signatory employer that accepted union job targeting funding for a private project violates Section 8(a)(1). [*FOIA Exemption 5*

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FACTS

In 1989, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Steamfitters Local 342 ("Union") established a job targeting program ("JTP"). The JTP was created solely by the Union; it is not referenced in any collective-bargaining agreement and is not the product of Union-employer negotiations. The exclusive objective of the JTP is to "expand[] the work opportunities available to employees working under U.A. Local 342 collective bargaining agreements." Through the JTP, the Union subsidizes the Union wages of a targeted contractor, enabling the Union contractor to competitively bid on projects against low wage non-Union contractors.

The Union controls all aspects of the JTP. The Union's Business Manager unilaterally determines whether to

target a job based on "whether it is in the best interests of the membership of Local 342,"[1] and all contractor paperwork is "internal" to the Union (i.e., for the benefit of the Union in administering the JTP). If a Union contractor requests JTP funding for a particular job, it must provide the Union with specific data regarding the job, man-hours, and non-Union bidders. On occasion, the Union will announce that it is targeting a specific job in order to induce Union contractors to bid. Once a job is designated as "targeted" by the Union, the Union decides the level of funding based on the man-hours of Union labor needed for the job. When a "targeted" job is awarded to a Union contractor, the contractor submits to the Union an approved hours verification form on a monthly basis, and the Union gives the contractor "grants" in the form of direct payments from the JTP fund. However, even if the Union decides to "target" a job and a Union contractor whose bid relied on a JTP grant is awarded the job, no employer is entitled to receive any JTP funding; the Union reserves the right to cancel funding at any time. Thus, a Union contractor bids at a reduced level in anticipation of a JTP grant at its own risk, "on faith" that the Union will fund such a grant.

The JTP is funded solely out of Union member dues; no employer monies are contributed. Union member dues are approximately 7% of gross wages,[2] which signatory employers deduct pursuant to a union security agreement. All Union member dues are paid to the Union "Vacation Fund," for distribution into one of nine trust funds by third party administrators. The JTP is one of those funds, and receives from the Vacation Fund 75 cents per man-hour worked. JTP grants to targeted contractors are then deducted from the JTP trust fund. Although Vacation Fund money is designated for the JTP, the membership may vote to

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[1] Contractors that secure JTP funding for "any purpose other than to promote its competitiveness to secure work that might be performed by non-union craftsmen" will have their JTP grant canceled and become barred from further JTP participation.

[2] Journeyman dues range from 6.7% to 7.6% of gross wages, depending on the contract.

transfer money between trust funds. For example, the membership voted to initially fund the JTP by transferring money from the strike fund account.

On October 10, 1996, non-Union contractor Can-Am Plumbing, Inc. ("Employer") filed a lawsuit for unfair business competition[3] in California Superior Court against L.J. Kruse Co. ("Kruse") for unlawfully accepting Union JTP grants for Kruse's work on the Ascent Corporate Campus Phase I project ("Ascent Project"), a privately funded project on which the Employer unsuccessfully submitted a bid.[4] The Employer alleges that Kruse violated the California prevailing wage statute[5] by accepting JTP money that was contributed by employees of Kruse and other contractors while they were working on publicly funded projects. The Employer also alleges that Kruse's acceptance of JTP money that was contributed by Kruse employees on privately funded projects violates California labor statutes which prohibit an employer from collecting or receiving a portion of employee wages and from secretly paying a lower wage than agreed upon.[6] The Employer seeks the following relief: damages, restitution, disgorgement, punitive damages and penalties, costs, and "[a]n order prohibiting and enjoining [Kruse] from ever again accepting, directly or indirectly, money paid as wages to any of its employees on private work, and any employee of any employer engaged in public works subject to the California Prevailing Wage law." On July 3, 1997 the court denied as premature Kruse's motion to stay proceedings based on NLRA preemption. To date, the Union has not been joined as a party in the Employer's lawsuit.

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[3] See Cal. Bus. & Prof. Code Section 17200.

[4] Can-Am Plumbing, Inc. v. L.J. Kruse Co., No. 774381 6 (Cal. Super. Ct., County of Alameda - N. Div. filed Oct. 10, 1996). Kruse was awarded JTP grants for four additional privately financed projects.

[5] Cal. Labor Code Section 1770 et seq.

[6] Cal. Labor Code Sections 221 and 223.

The Employer has presented no evidence to support its allegations of improper funding or payments. The Union does not maintain records indicating whether dues paying members were working on prevailing wage or privately funded projects. However, according to other evidence provided by the Union, during the relevant time period for the lawsuit most of its members were working on refinery projects, which are privately financed.[7] With respect to JTP payments, the Union states that it has targeted 17 state prevailing wage jobs since January 1995, which involved 28,800 Union man-hours. No federal prevailing wage jobs were targeted during that period.

The Employer has not alleged or produced evidence that the Union has ever enforced members' obligations to pay working dues or that Union members were coerced into signing dues checkoff authorizations. The Union affirmatively states that it has not enforced its members' obligations to pay dues under either its bylaws or a union-security clause since the JTP was established.

Kruse's legal defense of the Employer's lawsuit is being paid for by the U.A. 342 Joint Labor-Management Cooperation Committee, Inc. ("Committee"). The Committee is a non-profit mutual benefit corporation funded by tax exempt employer contributions based on man-hours worked under the collective bargaining agreement. The Committee's purposes include enhancing the competitiveness of the industry, maintaining a stable unionized work force, and improving employment conditions and opportunities for workers in Contra Costa and Alameda Counties, California.[8]

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[7] The Union states that approximately 12-15 Union members worked for a private maintenance contractor at Lawrence Livermore Labs, which may be federally funded. By contrast, at the same time a privately financed project, Clean Fuels Projects, employed approximately 1500 Union members.

[8] The Union received a legal opinion that the Committee's funding of Kruse's legal defense is consistent with its purposes, and would not adversely affect its federal tax exempt status.

On May 16, 1997, the Union filed the instant charge alleging that the Employer's lawsuit violates Section 8(a)(1) of the Act.

ACTION

We conclude that, absent settlement, complaint should issue alleging that the Employer's lawsuit violates Section 8(a)(1) *ab initio* or, alternatively, upon the decision to issue complaint. The Employer's entire lawsuit alleging that Kruse violated the California prevailing wage and labor statutes is baseless and retaliatory, and is also preempted under Garmon.[9] [*FOIA Exemption 5*

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A. The Employer's Lawsuit Interferes with Protected Conduct

In Manno Electric, Inc.,[10] the Board adopted the conclusion of the ALJ that job targeting programs constitute protected activity under the Act. The IBEW job targeting program in Manno made it possible for union employers to competitively bid for jobs against non-union employers with lower wage scales because the union supplemented the wages paid by targeted employers so those employers could obtain new work for union members and maintain union wage scales on those jobs.[11] The Board upheld the ALJ's determination that since the job training program objectives were protected, the program itself was arguably protected.[12] Therefore, a lawsuit filed by a non-union employer against the IBEW alleging that its job targeting program was unlawful in restraint of trade was

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[9] San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959).

[10] 321 NLRB 278, 278 n.5, 298 (1996).

[11] Id.

[12] Id.

preempted because it interfered with the arguably protected job targeting program.[13]

The JTP here constitutes protected activity because the JTP's objectives and its means of achieving them are virtually identical to those in Manno. As in Manno, the exclusive purpose of the JTP is to "expand" and "promote member employment opportunities" by subsidizing member wages on targeted projects. Indeed, contractors that secure JTP funding for any other purpose can have their JTP funding terminated and be barred from JTP funding in the future.

The holding of Manno applies here even though the sued party is a targeted employer that accepted JTP funds and not, as in Manno, the union that operated the job targeting program. In both cases, the job targeting programs constitute an exercise of employees' Section 7 rights accruing from Union membership to establish and benefit from a program with protected objectives -- obtaining Union jobs and protecting Union wage scales. A lawsuit directed against a targeted employer that seeks to enjoin as unlawful the operation of the JTP as to that employer has a direct and foreseeable consequence of interfering with employees' ability to achieve the JTP's protected objectives as much as a lawsuit against a union operating such a program.[14] Although only one targeted employer is

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[13] Relying on Manno, the ALJ in Associated Builders and Contractors, Inc., JD(SF)82-97, Case 32-CA-15647 (July 1, 1997), slip op. at 13-14, held that a lawsuit filed by a non-union employer against a union alleging that its job targeting program constituted an unlawful business practice in violation of California law was preempted because it interfered with arguably protected activity. The ALJ expressly rejected the argument that the protected nature of the job targeting program was affected by the mere possibility that the program might violate the California prevailing wage laws. Slip op. at 19. The case is currently before the Board on Employer exceptions.

[14] For example, in Dahl Fish Co., 279 NLRB 1084, 1111 (1986), enf'd, 813 F.2d 1254 (D.C. Cir. 1987), the employer's lawsuit against the union for filing charges on behalf of employees was held to interfere with protected

named as a defendant in the Employer's lawsuit, it is likely that the precedential effect of a court judgment against Kruse would "chill" Kruse's and other contractors' future participation in the JTP, and thus prevent Union members from realizing this protected benefit of Union membership.

B. The Employer's Claim that Kruse Violated the California Prevailing Wage Statute and Labor Laws Lacks a Reasonable Basis and is Retaliatory

The Supreme Court held in Bill Johnson's,[15] that the Board may enjoin as an unfair labor practice the filing and prosecution of a lawsuit which lacks a reasonable basis in fact or law and was commenced for a retaliatory motive. "[T]he Board need not stay its hand if the plaintiff's position is plainly foreclosed as a matter of law." Only if there is a "realistic chance that the plaintiff's legal theory might be adopted" should the Board defer to the state tribunal.[16] Applying Bill Johnson's, we conclude that the Employer's entire lawsuit alleging that Kruse violated

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conduct because there was "a nexus between the Union's action and the protection of employee rights." The employer's lawsuit would subject employees to "the dangers of lawsuits with their attendant costs, which could convince them to forgo their Section 7 rights to file charges." Id. The Dahl Fish decision cites Slate Workers Local 66 (Sierra Employees Ass'n), 267 NLRB 601, 602 n.10 (1983), for the proposition that there must be a "clear and direct relationship between the union action and the foreseeable consequences of that action - its restraint or coercion of employee rights." In Sierra, where the union sued employer representatives for filing unfair labor practices against the union, "any such 'nexus' between the union's action and the likely impact on employee protected rights [was] simply too attenuated. . . ." Id.

[15] Bill Johnson's Restaurants v. NLRB, 461 U.S. 731, 743-33, 748-49 (1983).

[16] Id. at 747.

the California prevailing wage statute and labor laws is baseless and retaliatory.

As to the prevailing wage statute, the Employer has provided the Region no evidence that the JTP is funded by employees on California prevailing wage jobs, and the Union maintains no records indicating which dues are being collected from employees working on a privately funded or a prevailing wage job. Even if the Employer is able to demonstrate that some dues money was paid by employees on state public works projects, it is virtually impossible to trace it to the JTP (and from there to targeted employers) because Union dues money from all sources is commingled in the Union's Vacation Fund, and only a portion of Vacation Fund money is distributed to the JTP. Tracing is even more problematic since the vast majority of Union members work on privately financed jobs, meaning that any dues collected from California public works projects is, at most, *de minimis*.

In addition to the Employer's lack of evidence of a state law violation, the Employer is suing over conduct that the State of California itself will not challenge. The California Department of Industrial Relations ("CDIR"), which prosecutes violations of the California prevailing wage statute, concluded in 1994 that it would not enforce the California prevailing wage statutes against job targeting programs such as the JTP that are funded through dues, as opposed to assessments,[17] without invoking NLRA preemption.[18] Since the CDIR believes there is no prosecutable violation of California law, the Employer has no grounds for bringing a private civil action for violation of those statutes.

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[17] See infra at 12-13 for discussion of this distinction.

[18] See Associated Builders and Contractors, Case 32-CA-15647, Advice Memorandum dated Nov. 21, 1996, at 3. However, the CDIR has determined that area "actual prevailing rates" must be reduced by the amount of employees' JTP contributions. Id., citing IBEW Local 11 v. Aubrey, 49 Cal. Rptr. 2d 759 (1991).

As to the state labor laws, the Section 7 right to improve employee working conditions through a job targeting program funded by employee authorized wage deductions, as expressed in Manno, is in direct conflict with the construction of California labor statutes sought by the Employer in state court. The text of those statutes outlaws all employer wage withholdings and employer collections of wages paid that are for purposes other than insurance premiums, hospital or medical dues, even if the employee expressly authorized the deduction in writing, unless an employer is "empowered" to make deductions by, *inter alia*, the NLRA.[19] However, the Employer is arguing that this state law be construed so as to prohibit employer wage withholdings to fund a JTP; this lawsuit allegation conflicts with deductions permitted under Section 7 of the Act (Manno, *supra*); and the state law allegedly supporting this claim on its face permits wage deductions where "empowered" under federal law. Therefore, this aspect of the Employer's lawsuit also lacks a reasonable basis under state law.

The Employer's lawsuit is retaliatory because it seeks to prevent Kruse and other contractors from participating the JTP, thus interfering with employees' Section 7 rights to operate job targeting programs.[20] The Employer's request for relief also warrants an inference of retaliatory motive

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[19] Cal. Labor Code Section 224 authorizes employer deductions only where:

> required or *empowered so to do by* state or *federal law* or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement. (Emphasis supplied.)

[20] Phoenix Newspapers, 294 NLRB 47, 49-50 (1989).

because it goes far beyond compensating the Employer for any losses it incurred in not being awarded the Ascent Project, which is the subject of the lawsuit.[21] Specifically, the Employer seeks punitive damages, penalties, disgorgement of "ill-gotten gains," and restitution to "itself and others."

C. The Employer's Lawsuit is Preempted

The Supreme Court reaffirmed in Bill Johnson's that the Board may also enjoin state court lawsuits which are preempted by the Act.[22] A lawsuit can be preempted if it involves activity which is arguably protected by Section 7 of the Act.[23] According to the Supreme Court, "[i]t is essential to the administration of the Act that these determinations [of whether activity is protected] be left in the first instance to the National Labor Relations Board . . . if the danger of state interference with national policy is to be averted."[24] This principle that a state court must stay its proceedings pending an NLRB determination of whether conduct being attacked in a lawsuit is protected has two exceptions: where the regulated activity regulated is "a merely peripheral concern" of the Act or it touches "interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to

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[21] See, e.g., H.W. Barss, 296 NLRB 1286, 1287 (1989) (lawsuit retaliatory where employer could not support its damage claims); Phoenix Newspapers, 294 NLRB at 48-50 (request for $10 million in punitive damages in lawsuit alleging libel and tortious interference with business relations supported conclusion that lawsuit was retaliatory).

[22] 461 U.S. at 737 n.5.

[23] Loehmann's Plaza, 305 NLRB 663, 669 (1991) (citing San Diego Bldg. Trades Council v. Garmon, *supra*, 359 U.S. at 244-45).

[24] Garmon, 359 U.S. at 244-45.

act."[25] Preemption based on conduct that is arguably protected occurs when a complaint issues, at which time a *prima facie* case has been demonstrated.[26]

The Board in Manno held that a job targeting program virtually identical to the JTP was protected by the Act and, for the reasons discussed in the preceding section regarding baselessness, neither Garmon exception applies. Therefore, the court proceedings should be stayed in order for the Board to decide in the first instance whether this protection is lost due to certain aspects of JTP funding and expenditures.

D. Any "Taint" from Alleged Unlawful JTP Funding and Expenditures does not Deprive the JTP of the Act's Protection

Finally, we reject the Employer's argument that, despite Manno, the Act does not protect the JTP because two of its funding sources and expenditures violate state law and that these "tainted" JTP funds somehow "taint" the entire JTP.[27] We conclude that the JTP program should not be deprived of its presumptive statutory protection, as expressed in Manno, where the "tainted" dues cannot be traced with any certainty to specific employer JTP grants, and the overwhelming majority of JTP funding is not allegedly unlawful under state law.

The protected lawfully funded character of the JTP virtually overwhelms any possible "taint" from allegedly unlawful JTP funds. The Employer's lawsuit only challenges what is at most a *de minimis* source of dues, monies

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[25] Id. at 243-44.

[26] Loehmann's Plaza, 305 NLRB at 670.

[27] Cf., Professional Ambulance Serv., 232 NLRB 1141, 1150 (1977) ("Cheating a public agency out of public funds by unlawfully collecting unemployment compensation is not protected activity; it is criminal activity."); Detroit Mailers Union No. 40 (Detroit Newspaper Publishers Ass'n), 192 NLRB 951, 952 (1971) (dues devoted to a purpose that is "inimical to public policy" violate the Act).

collected from Kruse employees and employees on state public works jobs. Since only a portion of such dues are allocated to the JTP, and only a portion of JTP-targeted projects involved Kruse or state public works jobs, the net effect of any "tainted" dues is less than *de minimis*. In addition to being less than *de minimis* in amount, the allegedly "tainted" JTP funds are virtually impossible to distinguish from the remaining "untainted" JTP funds. Dues are not even identified by the Union has having been collected from prevailing wage or private projects. Once any "tainted" dues enter the Vacation Fund they are commingled with -- and hence are indistinguishable from -- "untainted" dues. The JTP is one of eight trusts that receives a fractional distribution of these commingled dues, and each JTP grant is only a portion of that amount, further attenuating the connection to the "tainted" funding source. Moreover, since we concluded that the Employer's allegation of "taint" based on Kruse's receipt of JTP funds that were paid by its own employees on previous jobs was baseless, supra at 7-8, the alleged "taint" to the JTP is reduced that much more.

Significantly, the Employer does not allege that the Union's dues collection directly violates the Act or any other statute. For example, the lawsuit does not allege that the JTP violates Sections 8(a)(3) or 8(b)(2).[28] Nor is there evidence that the JTP is funded by involuntary dues check-offs or of enforcement of the dues check-off provision. To the contrary, the Union affirmatively states it has not enforced the dues check-off provision since the JTP was established. Moreover, we conclude that under the Board's decision in Detroit Mailers,[29] the JTP is funded by

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[28] Where there is a valid union security clause requiring Union membership as a condition of employment, Section 8(a)(3) of the Act prohibits employer discrimination based on non-membership where the Employer has reason to believe union membership was denied for any reason other than the failure to tender periodic union dues. Section 8(b)(2) prohibits a union from causing or attempting to cause an employer to violate Section 8(a)(3).

[29] Detroit Mailers Union No. 40 (Detroit Newspaper Publishers Assn.), 192 NLRB 951, 952 (1971).

dues because it is wholly funded by the "Vacation Fund," which receives working dues payments which are "periodic and uniformly required" and their collection, as discussed below, is not "inimical to public policy."[30]

Likewise, the Employer does not allege that the JTP violates the federal prevailing wage statute. Even if it was alleged, the JTP would not lose the Act's protection pursuant to Detroit Mailers since the U.S. Department of Labor ("DOL") will not enforce the statute to the extent it is allegedly violated by job targeting programs (like the JTP) that are funded by unearmarked dues. On May 30, 1996, Bernard Anderson, Assistant Secretary for DOL's Employment Standards Administration, wrote that "payments made by employees . . . to fund job targeting programs violate the Copeland Act . . . if the workers are employed on Davis-Bacon covered construction projects, and violate the Davis-Bacon Act as well if the effect is to lower the workers'

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[30] The General Counsel has taken the position that the Detroit Mailers test is the appropriate standard for determining whether a payment is dues or an assessment. See Inlandboatmen's Union of the Pacific, Case 36-CB-2101, Advice Memorandum dated March 20, 1997, at 6-7. Alternatively, the Board has limited "dues" to "regular payments imposed for the benefits to be derived from membership . . . for the maintenance of the organization." NLRB v. Food Fair Stores, Inc., 307 F.2d 3 (3d Cir. 1962) (collections for strike fund did not constitute dues). See also Teamsters, Local 959 (RCA Serv. Co.), 167 NLRB 1042, 1045 (1967) (credit union and building fund payments were not dues because they were not costs "incurred by the collective bargaining agent in representing" employees). Even applying this alternative test, the JTP funding here is not an assessment. The Board decisions finding certain collections to be assessments under the Food Fair standard involved separate levies, in addition to a special purpose. Here, there is no separate JTP payment by Union members, and the Board has never held that a union's internal allocation of dues constitutes a "special purpose." See Associated Builders and Contractors, Case 32-CA-15467, Advice Memorandum dated Nov. 21, 1996, at 8.

wages below the prevailing wage rate."[31] However, due to "the practical problems of tracing the funds to establish violations," where a job targeting program is funded by union dues, the DOL will prosecute only where union dues is "earmarked" for job targeting:

> Specifically, the Administrator stated that the Department would not take exception to the funding of job targeting programs by dues payments where dues are deducted from wages and deposited in a general fund used for a variety of purposes at the discretion of union officers, including from time to time a job targeting program. The administrator set forth a number of limitations, including that there be no formal or informal mandate that funds be spent on job targeting or be earmarked for that purpose. In addition, the Administrator stated that the Department would not take exception to situations where job targeting programs are funded through direct payment of union dues by employees, rather than through payroll deductions by the contractor from wages paid on Davis-Bacon projects.[32]

Under this policy, it appears that the DOL would not bring an enforcement action with respect to the JTP. Although a portion of Vacation Fund money is designated for deposit in the JTP trust fund, it is not necessarily "earmarked" for JTP use because the membership may vote to transfer it into another account, as it did in the past when it transferred strike fund money to the JTP. Thus, the JTP account is more accurately viewed as a budgetary technique than an ironclad earmarking of funds. Even if the JTP could be construed as falling within the letter of the law of the DOL enforcement policy, it does not satisfy the spirit of the DOL's policy. The DOL's requirement of "earmarking" appears to be directed at JTP contributions which can be traced -- from employee wages on publicly funded projects to the JTP fund, and eventually to JTP

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[31] See IBEW Local 48, 36-CB-2052, Advice Memorandum dated Jan. 17 1997, at 4-5.

[32] Ibid.

expenditures. As discussed supra at 8-8, 12-12, tracing such funds to the JTP here is a virtual impossibility. Therefore, where neither the statute nor the regulations differentiate between earmarked and unearmarked dues, but DOL makes that distinction and will not allege as unlawful funding from unearmarked sources, like the JTP here, we conclude that the JTP funding is not "inimical to public policy" pursuant to Detroit Mailers.

E. The Region Should Seek Reimbursement of Legal Fees Paid to Defend Kruse Against the Employer's Preempted Lawsuit

The Board's traditional make-whole remedy for the filing and/or maintenance of a lawsuit that is enjoinable under the Act includes an award of legal expenses incurred in defending such a lawsuit, thus returning the injured party to the *status quo*.[33] [*FOIA Exemption 5*

[33] See Bill Johnson's, 461 U.S. at 747 ("If a violation is found, the Board may order the employer to reimburse the employees whom he had wrongfully sued for their attorney's fees and other expenses" and "any other proper relief that would effectuate the policies of the Act"), on remand, 290 NLRB 29, 30 (1988); Be-Lo Stores, 318 NLRB 1, 12 (1995), enf. denied on other grounds, 126 F.3d 268 (4th Cir. 1997) (union awarded legal expenses in defending preempted lawsuit); Great Scot, Inc., 309 NLRB 548, 550 (1992), enf. denied on other grounds, 39 F.3d 678 (6th Cir. 1994) (Board amended remedy to include reimbursement of union's legal expenses for preempted lawsuit); Loehmann's Plaza, 305 NLRB at 672-73 (Board ordered employer to reimburse Union for legal expenses incurred in defending preempted lawsuit).

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CONCLUSION

For the foregoing reasons, we conclude that, absent settlement, complaint should issue alleging that the Employer's lawsuit violates Section 8(a)(1) *ab initio* or, alternatively, as of the decision to issue complaint. The Employer's claim that Kruse violated the California prevailing wage and labor statutes is baseless and retaliatory, and is also Garmon preempted. [*FOIA Exemption 5*

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B.J.K.